

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

**UNITED STATES OF AMERICA**

**Plaintiff,**

**-vs-**

**Case No. 3:12-cr-116(10)**

**HILBERTO RICO**

**District Judge Thomas M. Rose**

**Defendant.**

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**ENTRY AND ORDER DENYING DEFENDANT'S  
MOTION TO REDUCE SENTENCE (DOC. 362)**

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The Defendant filed a Motion to Reduce Sentence (Doc. 362) on June 25, 2015 and the Government filed a response (Doc. 365) on August 14, 2015.

At the Defendant's original disposition his calculated base offense level was 32. After reductions, including a two level reduction under U.S.S.G. §2 D1.1(a)(5)(A) and (B), the Defendant's total offense level was 23.

U.S.S.G. §2 D1.1(a)(5)(A) and (B) provides for an offense level that is specified in subsection c of that guideline decreased by two, three and four levels if that offense level is 32 or above. However §2D1.1 (a)(5)(A) and (B) provides no decrease for offense levels below 32.

Defendant's new calculated offense level with the two level reduction pursuant to Amendment 782 and in accordance with U.S.S.G. § 1B1.10 is a 30. The Defendant is again eligible for all the same decreases in his offense level with the exception of the two level reduction under §2D1.1(a)(5)(A) and (B) for offense levels of 32 or above.

As a result, applying the other reductions that were previously applied and to which he is still eligible, the Defendant's new total offense level is, again, 23. The resulting range of sentencing is the same as previously determined 46 to 57 months.

Consequently the Defendant is ineligible for further reduction because his guideline range was not lowered by the amendment. Therefore the Defendant's Motion to Reduce Sentence (Doc. 362) is denied.

IT IS SO ORDERED.

September 21, 2015

*\*s/THOMAS M. ROSE*

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE